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John G. Tallis
LETTER

FROM THE

from the Author
BISHOP OF LINCOLN

TO THE

Jan 5th 1877.

REV. CANON HOLE

ON

LORD PENZANCE'S DECISIONS.

WITH NOTES.

Lincoln

JAMES WILLIAMSON

RIVINGTONS

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PREFACE.

HAVING been requested to reprint the following Correspondence, published by CANON HOLE, I have taken the opportunity of enlarging one or two paragraphs in my Letter, and of adding a few Notes at the end, in illustration and confirmation of the statements in it.

C. L.

January 24th, 1877.

Cauntton Manor, Newark, January 8th, 1877.

My dear Lord Bishop,

The enclosed circular has been sent to me to-day, as Chairman of the Newark and Southwell branch of the English Church Union. I shall feel very grateful to your Lordship if you will kindly favour me with your opinion upon the resolution which it is proposed to submit to the meeting. By that opinion I shall not only be myself guided, but shall be able to influence many others.

With sincere respect and love, I remain,

Your Lordship's affectionate and faithful servant,
S. REYNOLDS HOLE.

To the Right Rev.

The LORD BISHOP OF LINCOLN.

Riseholme, Lincoln, January 10th, 1877.

My dear Canon Hole,

I received your letter yesterday, enclosing a resolution, which, as Chairman of the Newark and Southwell branch of the English Church Union, you forward to me, and which you inform me is to be proposed at a meeting of the members of several branches of the Union to be held on 'Tuesday next at Newark, in this diocese.

That resolution is as follows :—

“In consequence of recent action taken by the Court created under the Public Worship Regulation Act, this Meeting declares that in its judgment any sentence of suspension or inhibition pronounced by any Court sitting under the aforesaid Act is spiritually null and void, and that should any Priest feel it to be his duty to continue to discharge his spiritual functions notwithstanding such sentence, he is hereby assured of our sympathy,

and of such support and assistance as the circumstances of the case might demand."

In your letter to me you ask for my opinion on this resolution, and you add that you will be guided by that opinion, and will make use of it for the guidance of others.

I therefore feel bound to comply with your request. This resolution involves grave questions of Theology and Law, human and divine.

The fundamental principles which ought to be carefully borne in mind by all who deal with it are as follows:—

1.—All authority is from God. This is clearly stated in Holy Scripture by St. Paul (*Rom.* xiii. 1, 2), "Let every soul be subject to the higher powers (or authorities), for there is no power (or authority) but of God; the powers (or authorities) that be are ordained of God. Whosoever therefore resisteth the power resisteth the ordinance of God; and they that resist shall receive to themselves damnation;" and St. Peter says (*1 Peter* ii. 13), "Submit yourselves to every ordinance of man for the Lord's sake, whether it be to the king as supreme, or unto governors;" and St. Paul therefore writes to the Bishop of Crete (*Titus* iii. 1), "Put them in mind to be subject to principalities and powers, to obey magistrates, to be ready to every good work, to speak evil of no man."

Resistance to supreme human authority in lawful commands is disobedience to God, from Whom all authority flows.

2.—If the supreme human authority commands what is plainly contrary to the law of God, Whose representative and vicegerent the supreme human authority is, in such cases the authority is not to be obeyed, because all men are under a prior and paramount obligation to obey God. This was exemplified in the history of the three children at Babylon refusing to commit idolatry at the bidding of the king;

and in that of Daniel refusing to omit his prayers in obedience to the decree of Darius; and in that of the Apostles refusing to desist from preaching at the command of the Jewish rulers. In all such cases as these we must say with the Apostles, "We ought to obey God rather than men" (*Acts* v. 29; iv. 19). We must obey men for the sake of God, but we must not disobey God for the sake of men.

3.—In England the supreme human authority, under Christ, over all persons, spiritual as well as temporal, and in all causes, ecclesiastical as well as civil, is vested in the Sovereign. This is affirmed by the Church of England in her Articles (Art. xxxvii.), (which were agreed upon by the Church in Convocation,) and also in her Canons (Canons 1, 2). Therefore they who appeal to the authority of the *Church* and to her *Canon law*, are bound to acknowledge the Royal Supremacy, properly understood; and he that resists that authority in anything which is not plainly repugnant to the law of God, not only resists the law of the State, but of the *Church*; he *resists God*, from Whom all the authority of rulers and laws is derived.

4.—In the realm of England the laws of the land are the laws of the sovereign. They have no validity before they receive the Royal assent. In the words of Bishop Sanderson (in his seventh lecture on Conscience and on the efficient cause of human Law), "Our laws in England are called the *King's laws*, because the kings of England are the fountains of law and justice, and because God has bestowed upon them a sovereign imperial power, by which they give a force to the laws themselves, and cause them to be received as such."

And this is not only the case with regard to laws concerning *civil* matters, but also with respect to *laws ecclesiastical*, as the same author reminds us in the same lecture. The Canons framed by the Church in her Convocations and Synods "have no obligatory

force till they receive the assent of the Sovereign, by whose public authority as soon as they are confirmed they immediately pass into a law, and oblige the conscience of the subject."

5.—It is not indeed to be imagined that Bishops and Clergy of the Church of England *derive* their authority to preach or minister the sacraments from *any human source*. No; they derive it from Christ, and from Christ alone, Who is supreme over all human authority; and from Whom all authority comes. But the designation of the *places* in which (such as dioceses and parishes), their divinely appointed authority is to be *exercised and applied* by Bishops and Clergy, and the *external* jurisdiction by which that authority is supported, are from the laws of the realm, and from the supreme human authority in it.

6.—Not only all Laws in England which have any co-active authority, whether civil or ecclesiastical, are acknowledged by our greatest theologians to be the laws of the Sovereign; but all *Courts*, whether ecclesiastical or civil, are, strictly speaking, *the Queen's Courts*.*

This is distinctly stated in the statute of the first year of King Edward the Sixth, in these words, "all Courts Ecclesiastical are kept by no other authority than that of the King's most excellent Majesty," and this is very fully set forth in Bishop Sanderson's treatise, "on Episcopacy not prejudicial to Royal Power," (p. 47, ed. Lond., 1673, or in Bishop Jacobson's edition, vol. v., p. 162), to which I beg to refer you.*

7.—Let me now apply these principles to the resolution which you have sent me.

I do not intend to say that in laws which concern the Clergy and their public ministrations it is not very desirable that the temporal power should avail itself of the counsel of Bishops and Clergy in Provincial

* See the *Notes* at the end of this Letter, pp. 15, 16.

Synods, duly convened under royal authority, according to the principle laid down in the celebrated statute of appeals (24 Hen. viii., c. 12).

For the better framing of such laws, and for the readier acceptance of them by the Clergy, such a course is certainly very expedient, and I stated as much in the Parliamentary debates on the Public Worship Regulation Bill, on April 28th and June 4th, 1874, in the House of Lords, and also in a tract then published by me, entitled "*Senates and Synods.*" *

The question, however, raised in your letter to me, is *not*,—Whether the "Public Worship Regulation Act" would not have been a much better measure, if it had been passed with the consent of the Church in her Convocations,—but the question is, whether the decisions of the Court of Arches, as modified by that Act, have *no spiritual validity*, and ought to be resisted by the Clergy?

And here let us refer to our history. The Second Prayer Book of Edward the Sixth, and the Prayer Book of Elizabeth were put forth by the Crown, with the advice of certain Bishops and Divines, and with the authority of Parliament, but not of Convocation. The additions to the Church Catechism, and other changes in the Prayer Book in the reign of King James the First, did not receive the assent of Convocation till *after* their promulgation by the Crown. (See Canon 80.) The use of our Authorized Version of the Bible of 1611 does not rest on the sanction of Convocation. The Legislative measures which have altered the constitution and condition of our Cathedral Churches, and the "Church Discipline Act," have been passed without Synodical sanction.

These are examples of anomalies which we reasonably regret; and we shall do well to endeavour to prevent their recurrence by all well-considered measures

* "*Senates and Synods; with reference to the Public Worship Regulation Bill.*" Price One Penny. Rivingtons, 1874.

in our power ; especially by reference to the action of the House of Commons with regard to the "*Comprehension Bill*" in 1689 (see *Senates and Synods*, p. 14).

Again, the question which is raised in the resolution which you have sent me, is whether sentences of suspension or inhibition pronounced by the Court of Arches, as recently modified by the Public Worship Regulation Act, are "*spiritually null and void*," and whether it be right to encourage the Clergy of the Church of England to "continue to discharge their spiritual functions," notwithstanding such sentences, by assuring them not only of sympathy, but of "such support and assistance as the circumstances of the case might demand."

The precise meaning of the word *spiritually* in this resolution is not clear ; it may signify what appertains to the *Church* as distinct from the State, and be equivalent to *ecclesiastical*, or it may mean what is divine, and affects the *conscience*.

Let us consider it in both these senses.

The Court in question is an *Ecclesiastical* Court, it is the Court of the Province in which a Judge sits who is delegated by the *Metropolitan*.

The Court of Arches is also one of the Queen's Courts ; and has been constituted by a legislative enactment, which is one of the Queen's laws ; and the Queen's Majesty is acknowledged by the Church of England to be supreme, under God, over all persons, spiritual as well as temporal, and in all causes, ecclesiastical as well as civil. Accordingly, ever since the Reformation in the 16th century, there has been an Appeal to the Crown in all causes, spiritual or ecclesiastical, and not only so, but every Priest of the Church of England solemnly pledged himself in the House of God, at his ordination to the priesthood, to "minister the doctrine and sacraments and discipline of Christ as the Lord hath commanded, and as this *Church and Realm* hath received the same."

We may, or we may not, regard this state of things as satisfactory. It has, I think, its imperfections in practice, as all earthly things have. But, my dear friend, we need not hesitate to prefer our own system of Church Government to other systems; such, for example, as the Papal, where all authority, human and Divine, is subjected to the will of *one man*; or the Puritan, where, under a professed zeal for the royalties of Christ, all is made subordinate to consistories of human invention; or the Erastian, where Divine law is to give way to the human will; or to the still more modern theory of Government, where everything is at the mercy of popular plebiscites. And the ecclesiastical system of "*disestablished churches*," as far as we have seen it, is not very happy in its results. Perhaps some of those, who now court Disestablishment, would be the first to rue it.

But after all we must remember, this is not the question. The question is whether we, the Bishops and Clergy of the Church of England, who have been admitted to our offices and benefices under certain conditions freely accepted by ourselves, are at liberty to violate those conditions, and then to claim a right to hold those offices and benefices.

Such a course seems to be at variance with the duty which we owe, as Clergymen, to the Church.

And now suppose it to be alleged that the Court in question, which has been recently modified without the consent of the Church, cannot by any of its judgments oblige our consciences to obedience. Let me answer again, in the words of an author already quoted, that "temporal authority may have a spiritual effect derived to it from the power of some superior cause under which it acts. A magistrate when he justly executes his legislative power which God has put into his hands, acts by virtue of a *divine* authority and by the appointment of God, Who is a spirit, and Who, as the Lord and Father of spirits, has sovereign authority over the spirits of men." (*Bishop Sanderson, Lecture*

5.) Here the words of the Apostle apply, "We must needs be subject not only for wrath (*i. e.*, for fear of punishment) but for *conscience* sake." (*Rom. xiii. 5.*)

To resist such authority, in things which are not clearly contrary to the Divine Law, is to resist God; and such an offence is greater in the Clergy, who have pledged themselves to be subject to the Sovereign as "supreme over all persons, and in all causes ecclesiastical and civil;" and who are bound to teach others by example as well as by precept "to be subject to principalities and powers, to obey magistrates." (*Titus iii. 13.*)

8.—When also a Clergyman, who has solemnly promised at his ordination to obey his Ordinary (*i. e.*, the Bishop of the Diocese), is commanded by his Bishop, in the exercise of his Episcopal authority, to submit to the decisions of the Court of Arches, as now constituted, I confess that I cannot understand how in such a case "the decisions of the Court have *no spiritual validity*," but on the contrary, a Clergyman who sets them at defiance, appears to be openly despising and resisting both spiritual and temporal authority.

9.—It may indeed be alleged by some well-meaning persons that such clergymen are *suffering persecution*, and have claims to sympathy and support. But the fact is, such clergymen are *not martyrs, but persecutors*. They are persecuting the Church of which they are ministers, by disturbing its peace, and by stirring up strife, and by spreading confusion and anarchy, and by marring its efficacy, and imperilling its safety.

As was observed long ago by St. Augustine, such persons are like Agar and Ishmael, who complained of persecution, but who persecuted Sarah and Isaac. (*Galat. iv. 29.*)

10.—The resolution in question pledges all who

vote for it, to give to those who resist the authority of the Court of Arches "such support and assistance as the circumstances of the case may demand."

In other words, it will bind them not only to help in defraying the legal expenses of such clergymen as may resist those decisions, but also to provide maintenance for them and their families during suspension and after deprivation; and also to build for them churches and parsonages, when, in consequence of such resistance, they may be deprived of the churches in which they now minister, and of the houses in which they now dwell.

This may be a very serious matter; but it vanishes into insignificance when compared with the consequences of the separation of pastors from their flocks, and of the disruption of the Church of England, and of all the calamitous results of such a disruption, moral and religious, not only to the Church but to the Nation.

11.—This resolution must, if carried, lead its supporters much further.

They who resist the decisions of the Court of Arches on the grounds alleged by them, must by parity of reasoning proceed also to resist the authority of the Final Court of Appeal, namely, the Judicial Committee of Privy Council, which has succeeded the Court of Delegates, and has been constituted by legislative enactments, without the advice or assent of the Church. Indeed, this is already avowed by some. And, my dear friend, who can foresee what will be the end of such a conflict as this?

12.—In writing thus, I shall not be supposed to say that our present system of Ecclesiastical Judicature, and our present mode of legislating on ecclesiastical and religious questions are not open to serious objections, and do not require amendment. On the contrary, I fully admit the force of much that is pleaded in both these respects. I am of opinion that *for the sake of the State*, as well as for that of the

Church, much more liberty ought to be given to her, and much more importance be attached to the judgment of the spirituality in Ecclesiastical causes, and to the action of the Church of England in her Synods, diocesan and provincial, so that she may be recognized in her authentic character, as grounded on Holy Scripture, interpreted by the consent and practice of the ancient Catholic Church.

But we shall never obtain these benefits by violent resistance to constituted authorities. On the contrary, by such resistance we shall provoke violent reprisals, and greatly injure the cause we desire to maintain.

13.—And here let us consider the example of our blessed Lord Himself and His Holy Apostles. Their days were evil days for the ancient Hebrew Church of God. Bad men sat in high places, civil and ecclesiastical. And yet our Lord commanded His disciples to obey them in all matters not contrary to God's law (*Matthew* xxiii. 2). The Hebrew High Priesthood, instituted by God Himself, was no longer hereditary for life, but high priests were made and unmade by the heathen power of Rome. Yet our Lord communicated with them in the temple, and pleaded before them; and His Apostle St. Paul stood at the tribunal of one of the worst of that number, and owned him as the ruler of God's people, and corrected himself for speaking evil of him (*Acts* xxiii. 4, 5). And he pleaded, in a cause of religion, even before Felix Agrippa, and Festus (*Acts* xxv. xxvi.)

14.—No age of the Church can be mentioned in which there have not been many flaws and blemishes in the relations of the civil and ecclesiastical authorities. But the way to remove them is not by disobeying God in resistance to lawful authority, but by judicious remedial measures, and by doing our own duties in our respective callings, and by improving the diocesan and parochial system of the Church of England, especially in our large towns; and by diffusing her benign influence

in the hearts of the population, so that by their means acting on the Legislature, wise and wholesome laws may be enacted, and the spiritual and temporal authorities may move in harmonious concert for the promotion of the Divine glory, in obedience to the Divine will and word, for the honour of the Crown of England, for the peace and stability of the Church, and for the safety and prosperity of the realm.

I am, my dear Canon Hole, yours affectionately,
C. LINCOLN.

The Rev. CANON HOLE, Rural Dean,
Caunton Manor, Newark-on-Trent.

Caunton Manor, Newark, January 11th, 1877.

My dear Lord Bishop,

I feel most thankful to your Lordship for the letter which I have received this morning, and I am convinced that the publication of it, which you kindly permit, will not only stablish, strengthen, settle many a doubtful mind, but will promote in this diocese, and wherever it is read, the spirit of obedience, loyalty, and peace.

Believe me to remain, with affectionate respect,
Your Lordship's grateful and faithful servant,
S. REYNOLDS HOLE.

[The following is from Bishop Sanderson *On Episcopacy, &c.*, pages 26—35, ed. Lond. 1673. Bishop Sanderson's authority in the Convocation and Church of England was evinced by his being appointed to write the Preface to our Book of Common Prayer, at the last revision of it.]

The *Ministerial Power* (in the Church) is that which is common to Bishops with their fellow Presbyters, viz, the Preaching of the Word, and the Administration of the Sacraments, and is confessed to be *from heaven, and of God*.

And yet no prejudice is at all conceived to be done thereby to the regal power, because the Ministers, who exercise that power,

are the King's subjects, and are also, in the executing of those very acts, that are proper to their ministerial functions, to be limited and ordered by the *Ecclesiastical Laws*, i. e. by such Laws as have been by regal power established in this realm.

The King doth no more challenge to himself, as belonging to him by virtue of his Supremacy Ecclesiastical, the power of *ordaining Ministers, excommunicating scandalous offenders, or doing any other act of Episcopal office in his own power*, than he doth the power of Preaching, administering the Sacraments, or doing any other act of Ministerial Office in his own person; but he leaveth the performance of all such acts, of either sort, unto such persons as the said several respective powers do of divine right belong unto; *viz.* of the one sort to a *Bishop*, and of the other to *all Priests*.

Yet doth the King, by virtue of that supremacy, challenge a power as belonging to him, in the right of his Crown, to make Laws as well concerning Preaching, administering the Sacraments, and other acts belonging to the function of a Priest, as concerning Ordination of Ministers, proceedings of matters Ecclesiastical in the *Spiritual Court*, and other acts belonging to the functions of a Bishop; to which Laws as well the Priests as the Bishops are subject, and ought to submit to be limited and regulated thereby, in the exercise of those their several powers; their claim to a *jus divinum*, and that their said several powers are from God, notwithstanding.

All power, to the exercise whereof our Bishops have pretended, cometh under one of the two heads; of *Order*, or of *Jurisdiction*.

The power of *Order* consisteth partly in Preaching the Word, and other Offices of Public Worship, common to them with their fellow-ministers; partly in Ordaining Priests and Deacons, admitting them to their Sacred Cures, and other things of like nature, peculiar to them alone.

The power of *Jurisdiction* is either *internal*, in retaining and remitting sins *in foro conscientiae*, common to them also, for the *substance* of the authority, though with some difference of *degree*, with other ministers; or *external*, for the outward government of the Church in some parts thereof, peculiar to them alone.

That *external* power is either *directive* in prescribing rules and orders to those under their jurisdictions, and making *Canons* and *Constitutions* to be observed by the Church; wherein the inferior Clergy, by their representatives in *Convocation*, have their voice, as well as the Bishops; and both dependently upon the King; for they cannot either meet without the writ, or treat without his commission, or establish without his royal assent.

Or it is *judiciary* and *coercive* in giving sentence, *in foro exteriori*, in matte of Ecclesiastical cognizance.

Of these powers some branches, not only in the exercise thereof, but even in the very substance of the power itself (as, namely, that of *external jurisdiction coercive*), are by the Laws declared, and by the Clergy acknowledged to be wholly and entirely derived from the King, as the sole fountain of all Authority of *external Jurisdiction*, whether *spiritual or temporal*, within the realm.—*Bishop Sanderson*.

Richard Hooker, Laws of Eccl. Polity, viii. 8, thus writes, "As the person of the King may for just considerations, even where the cause is *civil*, be notwithstanding withdrawn from the seat of judgment, and others *under his authority* be fit, he unfit himself, to judge; so the considerations for which it were haply not convenient for kings to sit and give sentence in *spiritual courts*, where causes ecclesiastical are usually debated, can be no bar to that force and efficacy, which their sovereign power hath over those very consistories, and for which we hold without *any exception that all Courts are the King's*."

And see *Bishop Andrewes*, Tortura Torti, p. 380, where is probably the clearest and most comprehensive statement of the nature, offices, and limits of the exercise of the Royal Supremacy.

The whole may be summed up as follows.—

1. All authority is from God alone.
2. In England, the Sovereign is, *under God*, supreme over all persons, spiritual and temporal; and in all causes, Ecclesiastical and Civil.
3. The Sovereign is the Fountain of Justice.
All Courts, strictly speaking, are (in the words of Richard Hooker) Courts of the Sovereign, and derive authority, as far as it is *external* and *co-active*, from the Sovereign.
4. The Sovereign dispenses justice, in Diocesan Courts, by the Bishop of the Diocese, who has been accustomed to delegate his authority to the Chancellor of the Diocese.
5. The Sovereign dispenses justice, in the Court of the Province, by the Metropolitan, who has delegated his authority to the Dean of the Court of Arches.
6. The Sovereign, finally, receives Appeals in Ecclesiastical Causes, in the Judicial Committee of Privy Council, which has *no power of deciding* causes, and does *not pronounce any judicial sentence*, but *gives advice* on the causes brought before it to the Sovereign, who, after hearing the advice of her Prelates and Councillors, pronounces final sentence thereupon in person—in Her Majesty's Privy Council.

Bishop Andrewes thus writes, page 365, "There ought to be conjunction between the Realm and the Church, but not confusion. As they have distinct causes, so they ought to have separate Courts; but the Church, not less than the Realm, ought to hold her Courts under the King, by whose authority Judges

preside; Amariah in the Courts of the Church, Zebadiah in the Courts of the Realm (see 2 *Chron.* xix. 11), but both by command of the King."

Bishop Stillingfleet thus writes (*Ecclesiastical Cases*, ii. 99):—"As in temporal matters the King's supreme authority is exercised in his ordinary Courts, so likewise in *Ecclesiastical* Courts, which derive their *jurisdiction* from the King as supreme." *Bishop Stillingfleet* uses the term *jurisdiction* because (in the words of *Bishop Andrewes*, *Tortura Torti*, p. 380) "we do not attribute to the King the *power of the Keys*, i. e., of *spiritual censures* and *excommunication*;" but we, as *Francis Mason* says (*de Minister. Angl.* iii., c. 3. p. 271), hold that the "King may command those, who have that power, to *use it rightly*."

In the above quotations from *Richard Hooker*, *Bishop Andrewes*, *Bishop Sanderson*, and *Bishop Stillingfleet*, we have the opinions of our greatest divines of the 16th and 17th centuries.

Let me add some testimonies of eminent Laymen.

King Charles I. (in his First Paper at the Isle of Wight) thus speaks:—"In former times, under *Pagan* Princes, the Church was a distinct body of itself, divided from the Commonwealth, and was governed by its own rulers." He proceeds to exemplify this by reference to the acts of Christian Bishops in those times, and then goes on to say:—"After that the Church, under *Christian* Princes, began to be incorporated in the Commonwealth (whereupon there must of necessity follow a complication of the Civil and Ecclesiastical Powers); the *jurisdiction* of Bishops, in the *outward* exercise of it, was subordinate unto and limitable by the supreme Civil Power, and hath been, and is at this day, so acknowledged by the Bishops of the realm."

Chief Justice Coke (4 *Inst.* 321):—"Those who have spiritual jurisdiction, as Archbishops and Bishops, are the *King's Judges*."

Lord Chancellor Clarendon (*Religion and Policy*, Introduction, p. 1—7):—"The King cannot prescribe what Laws they please contrary to the law of Nature and of God, so they cannot impose what religion they please contrary to what He hath enjoined; but the way to propagate the same is committed to the Sovereign Power, to provide for the peace of Church and State.

Sir Roger Twysden, in his learned *Vindication of the English Reformation*, says, p. 115:—"When we say that the Prince as the principal, without whom nothing is done, may be rightly termed head in the act of reformation, our meaning is not that he will deal in points of Ecclesiastical cognizance without the advice of his Bishops and other learned of the Clergy; we know in things proper Joshua is to take counsel of Eleazar (*Num.* xxvii. 21) and the Kings of this nation have ever done so.



